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‘A Hussy Who Rode on Horseback in Sexy Underwear in Front of the Prisoners’: The Trials of Buchenwald’s Ilse Koch

Abstract

Ilse Koch was convicted in August 1947 for her role in atrocities at the Buchenwald Nazi concentration camp. Pregnant at the time of her prosecution, Ilse was the only woman amid the 31 defendants in that trial, which was held at the American Military Court at Dachau. Ilse was sentenced to life in prison, but her sentence was later commuted to four years. In 1950-1951, in the wake of public outrage over her release, Ilse was prosecuted by West German authorities for murder. She was sentenced to life in prison, once again, yet this time remained in jail until she committed suicide on 1 September 1967, at the age of sixty.

Keywords

women atrocity perpetrators; criminal justice; gender and violence

Introduction¹

Ilse’s trials² evince the prosecution of women perpetrators as visual spectacles. In Ilse’s case, this spectacle is spun by law and also by the visibilities (and invisibilities) of law in extra-legal spaces. Media accounts depicted Ilse as hyper-sexualized, a ‘red headed cocotte’, as the ‘bitch of Buchenwald’; a 1975 Canadian pornographic film features her as the lead character in a series called ‘She Wolf of the SS’ that depicts sexual acts with prisoners; musical artists, moreover, have recorded songs about her. Ilse’s conduct at Buchenwald indeed was credibly rumoured to be one of frequent affairs, simultaneous lovers, and the sexual humiliation of prisoners. But this, too, was the conduct of many men, much more so, such that the gendered construction of her sexual identity played a catalytic role in her intersections with law and with post-conflict Germany. Ilse’s trials tabooified women perpetrators, spectacularized female violence, and served as an optical space to (re)establish appropriate feminine morays. Critiques of Ilse’s trials furthermore also weave problematic narratives of feminine innocence and victimized powerlessness, or simply ignore her entirely as a perpetrator. In the end Ilse’s actual story – ‘her’ story – becomes lost amid prurience, politics, and burlesque. This article principally aims to reclaim Ilse’s ‘story’ while locating her agency; and secondarily to tentatively gesture towards some broader takeaways regarding atrocity prosecutions.

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² Statement to the *New York Times* by Dr. Konrad Morgen, an SS judge and investigator, who testified against Ilse Koch. David Binder, ‘Ilse Koch’s Posthumous Rehabilitation Sought by Son’ *N.Y. Times* New York, 7 May 1971. In this paper we use first names for all individuals after first mentioning them with their full name.



1 Introduction

An American Military Tribunal convened in Dachau convicted Ilse Koch in August 1947 of 'violations of the laws and customs of war' for her role in atrocities at the Buchenwald concentration camp. This Nazi hard labour camp held ten thousand men. Average life expectancy among prisoners was three months. Fifty thousand prisoners died in Buchenwald over the course of its operation. Ilse, the wife of camp *Kommandant* Karl-Otto Koch, was the only woman among the 31 defendants. Prisoners and other guards informally referred to her as the camp *Kommandeuse*. Karl never saw the end of the war because he was convicted by an SS court (and executed) for embezzlement, private enrichment, and murder of prisoners and medical staff.³ Although Ilse also had been charged in these SS proceedings, she was ultimately acquitted for lack of evidence. Ilse testified against Karl at this trial.

Pregnant at the time of her 1947 trial, Ilse was sentenced to life in prison, but her sentence was subsequently commuted to four years. Indeed, she was released. The charges against her were lurid: she allegedly collected shrunken human heads, had lampshades made out of stretched human skin in her living room, and beat prisoners who looked at her when she walked about in short skirts without underwear.

In 1950, following her release, Ilse was prosecuted by West German authorities for murder. While many Nazi convicts had their sentences commuted, most were not subsequently retried. Ilse, however, was different: she was sentenced to life in prison, once again, yet this time remained in jail until she committed suicide on 1 September 1967.

³ It has been reported that Karl was executed on 5 April 1945, just days before Buchenwald's liberation. He was subsequently burned in Buchenwald's crematorium. David A. Hackett (trs), *The Buchenwald Report* (Westview Press 1995) 341; Wendy A. Sarti, *Women and Nazis: Perpetrators of Genocide and Other Crimes During Hitler's Regime, 1933-1945* (Academica Press 2012) 150-151.

Very few women became the subject of judicial proceedings following the Holocaust. So, why Ilse? And why prosecute her twice? Alone, the second time? Why did law find her so irresistible? These are the questions that jumpstart this article. Part 2 herein describes Ilse's background, her trials, and her death. Part 3 examines advocacy, media, pop culture, and scholarly distortions of her story and connects these to both patriarchal and feminist impulses. Part 4 returns to the trials and unpacks two troubling due process aspects, namely, the proportionality of her punishment and the subtext of associative culpability. Part 5 concludes by gesturing towards broader insights discernible from Ilse's encounters with the law: including the kinds of historical authentications that trials provide, the shadow sides of outreach, and the role of ordinary women in the metastasis of atrocity.

2 Ilse: Background, Prosecution, and Incarceration

2.1 *Beginnings and Progressions*

Margarete Ilse Köhler was born on 22 September 1906, in Dresden (Saxony). Her father was a factory foreman. The family was not politically active. 'She was known as a polite and happy child in her elementary school'.⁴ Ilse later studied accounting and worked as a bookkeeper. She became a member of the Nazi Party in 1932.⁵

As of 1934, Ilse worked as a secretary near Berlin at the Sachsenhausen concentration camp.⁶ She married Karl-Otto Koch sometime between 1936 and 1937; she had met him (likely at Sachsenhausen camp) through contacts in the SS and SA. Ilse and Karl had three children together and Ilse had one more child later on. Artwin, Gisela, and Gudrun were born at Buchenwald. Artwin supposedly committed suicide after World War II. Gudrun died unexpectedly before her first birthday while on a skiing holiday.

Ilse arrived at Buchenwald in 1937 when Karl was assigned as the camp's *Kommandant*. They lived in the largest villa on site – which became known as 'Villa Koch –where some prisoners 'worked' as servants. Karl and Ilse lavishly and extravagantly entertained. Ilse's Buchenwald lifestyle was privileged compared to that of her youth.⁷ She fancied 'aristocratic' conduct during the war and imagined herself as *eine gnädige Frau* (a gracious lady), an appellation which she insisted that the prisoners call her.

In 1941, Karl was transferred to Lublin, where he helped establish the Majdanek concentration and extermination camp. Ilse remained at Buchenwald, however, until 24 August 1943 when she and Karl were arrested on orders of the SS. Corruption at the Buchenwald camp had sparked an investigation into the couple.⁸ Both were charged with private enrichment, embezzlement and the murder of prisoners.⁹ The SS Police Court convicted Karl in 1944 and he

⁴ 'Little is known about Ilse's childhood. Reports say that she had a normal and polite upbringing school life'. 'Ilse Koch, The Bitch of Buchenwald' (*Foreign Policy I*) <https://foreignpolicyi.org/ilse-koch-the-bitch-of-buchenwald/> accessed 14 July 2020.

⁵ Sarti, *supra* note 3, 142.

⁶ Ibid., 142.

⁷ Ibid., 145.

⁸ Karl had previously been arrested in 1941 at the recommendation of Josias Erbprinz zu Waldeck (SS-Obergruppenführer). The ongoing investigation was likely the reason behind Karl's transfer to Lublin. For more information on the investigation, see James J. Weingartner, 'Law and Justice in the Nazi SS: The Case of Konrad Morgen' (1983) 16 *Central European History* 276, 287-288.

⁹ Heinz Höhne, *The Order of the Death's Head: A History of the SS* (Penguin Books 2001).

was later executed at Buchenwald. Ilse was acquitted and was released. She went to live with her surviving family in Ludwigsburg, where US authorities arrested her on 30 June 1945.

Information on the 1944 SS trial is scarce in that the trial records have been destroyed. That said, reported sources indicate that the investigation against Karl had been ongoing for a while. He had previously been arrested and released. His transfer from Buchenwald, which was accompanied with demotions, likely resulted from these early investigations. In his time a *Kommandant* at Buchenwald, Karl demonstrated deteriorating leadership which led to the escape of prisoners and deployment of excessive violence. Ilse was accused of habitually receiving stolen property (cash and goods). Little evidence was proffered against her however. What is more, Ilse testified at length against Karl in these proceedings. She presented herself as a normal SS wife, mother, holiday-taker, caregiver, and horseback rider.

Ilse's fourth child, Uwe, was conceived in her prison cell at Dachau by an unknown father. Ilse had been kept in isolation while awaiting trial purportedly with no contact with any men, except for the American interrogators and translators, most of whom were Jewish. Hence, rumours swirled that the father was a Jewish translator, though it was likely another prisoner, Fritz Schäffer.¹⁰ Ilse gave birth to Uwe in October 1947 in the Landsberg prison hospital near Dachau where Ilse had been sent to serve her first sentence. Uwe was immediately taken from Ilse and put in a Bavarian foster home. Uwe saw his mother's name by chance on his birth certificate when he was eight years old. Eleven years later, he saw his mother's name in a newspaper headline and learned she was in prison. Uwe visited Ilse for the first time in 1966 when he turned nineteen years of age.¹¹ At that point, he began visiting her regularly at Aichach women's prison where she was serving the life sentence imposed by the West German state court.¹²



2.2 1947 Trial

United States of America v. Josias Prince zu Waldeck et. al. (known as the 'Buchenwald Case') began on 11 April 1947. Waldeck was the highest ranked among the accused and hence was the

¹⁰ 'Koch, Ilse-Kohler, "The Bitch of Buchenwald"' (*World War II Graves*)
<<https://ww2gravestone.com/people/koch-ilse/>> accessed 6 September 2019.

¹¹ Binder, *supra* note 8.

¹² *Ibid.*

first defendant listed. The trial ended on 14 August 1947. It was held at the American Military Court at the internment camp of Dachau (General Military Government Court for the Trial of War Criminals). This case forms part of a group of cases known colloquially as the ‘subsequent proceedings’.¹³

It was observed in court as evident that Ilse, then aged 40, was pregnant – indeed, eight months at the time. This stunned the audience because she had been supposedly kept in isolation while awaiting trial with no contact with any men except American interrogators, most of whom were Jewish.

Interest in the trial was high. At the suggestion of General Eisenhower, a group of newspaper reporters and U.S. Congressmen were flown in and given a tour of the Buchenwald camp. Every major newspaper in America reported on Ilse. A number of these articles deployed sensationalized and sexist language to describe Ilse. Indeed, extra rows of seats had to be installed in the courtroom to accommodate the crowd of reporters. While Ilse was just one of 31 accused, her presence garnered disproportionate attention.

Ilse (along with the 30 other defendants) was charged and convicted of violating ‘the Laws and Usages of War’ under the Hague Convention of 1907 and the Geneva Convention of 1929. Specifically, the charges involved ‘acting in pursuance of a common design to [...] aid, abet, and participate in the operation of Concentration Camp [...] which operation included the wrongful and unlawful subjection of citizens [...] to killings, beatings, tortures, starvation, abuses and indignities...’.¹⁴

These convictions rooted within Ilse’s contribution to the common design and her role in the structural violence in concentration camps. She was sentenced to life imprisonment on 19 August 1947. *Time Magazine* reported that a US lawyer at the trial noted that ‘there was no way to compute the number who wanted to testify against her [Ilse] because (1) she was a woman, (2) she was the commandant’s wife, and (3) she was just so goddamn mean’.¹⁵ It is noteworthy that the sexualized presentation of Ilse at this trial traces back to early journalistic reports publicly released in newspapers at the time when Buchenwald had been liberated. The US military had made a report of its findings in which Ilse featured prominently. In a sense, then, early on Ilse was presented as *the* despicably blameworthy villain among many villains at Buchenwald.

The prosecution presented documentary and physical evidence at trial, including a film made three or four days after the liberated camp came under the control of the US Army, and two shrunken heads.

In addition, prosecutors offered *viva voce* evidence delivered by ten witnesses. Witnesses recounted that any ‘orders’ given by Ilse were to be obeyed as if they had been given by Karl in his official capacity as the *Kommandant*. Witnesses testified that Ilse often reported inmates to camp authorities for what she had determined as improper behaviour, knowing as she did that these inmates would be severely punished. Some witnesses provided specific examples. For example, one witness was reported by Ilse for drinking a glass of wine and was then beaten, forced to run across a pile of rocks several times, and lashed twenty-five times with a stick, and then taken to the camp prison and hung by his arms for three hours. Two witnesses testified that Ilse told Karl that ‘this dirty pig dared to look at me’ and then Karl beat that inmate so severely

¹³ Joan Ringelheim, Interview with William D. Denson, Chief Prosecutor of Buchenwald Trial, United States Holocaust Museum (25 August 1994).

¹⁴ *United States v Josias Prince zu Waldeck et al* No.000-50-9 (15 November 1947) [Review and Recommendations of the Deputy Judge Advocate for War Crimes] 1-2.

¹⁵ ‘The Bitch Again’, *Time* (New York, 4 October 1948) page. [].

that it became necessary to carry him away while Ilse watched. A witness testified that Ilse told Karl: 'Have a look at this dirty Jewish swine off there, too lazy to work. I don't want to see him anymore,' and that Karl then proceeded to kick and severely flog him with a riding crop.

Witnesses also testified to the following:

- Ilse saw an inmate who had diarrhoea relieving himself and ordered the SS lieutenant in charge to put a stop to it. The SS lieutenant then overworked the inmate who collapsed and died the next day;
- Ilse complained that 11 inmates picked berries near her house and they were punished by receiving 25 lashes;
- A witness and a Czech chaplain were digging a ditch and Ilse stood astride the ditch in a short skirt with no underwear and when they looked up at her she beat them with her riding crop;
- Ilse hit an inmate in the face and on the body with a stick in her house;
- Other inmates, who were weak and could not run, were forced to carry rocks to her house and she hit them with her riding crop causing them to fall and knock others down and many were injured;
- Ilse allegedly had lampshades, photo albums, a briefcase and a pair of gloves in her house made from human skin;
- Many inmates that Ilse saw with tattooed skin were allegedly called to the hospital and killed in order to obtain their skin for Ilse's collection.

Dr. Sitte, who had a PhD in physics, testified that it was common knowledge that tattooed prisoners were sent to the hospital after Ilse had passed by them on work details, that tattooed skin was stripped off their dead bodies; this witness added that he had never directly seen any of them and had no personal knowledge. Additionally, he testified the lampshade from the film was not the lampshade made from human skin that was allegedly delivered to Ilse.

Former inmates testified they never saw Ilse beat anyone, but they had heard she reported inmates who were beaten as a result.

The evidence against Ilse was extensive. That said, much of it was hearsay or 'common knowledge' and not necessarily direct knowledge.¹⁶ On the one hand, this is unsurprising in that direct eyewitness testimony for the most part may be difficult to come by in any atrocity trial, certainly one involving events in a sealed off camp with extensive suffering and relatively few survivors. On the other hand, trials are to adhere to due process; hearsay evidence with select exceptions is for the most part inadmissible – certainly in common law adversarial systems – or to be taken as inherently unreliable. Our point here is not to discredit the evidence – direct and circumstantial – against Ilse. It was overwhelming. Nor is it to exonerate her. Rather it is to suggest that some of the most lurid evidence that 'lives on' still today in what is 'remembered' about Ilse is the same evidence that, from an accuracy standpoint, is the least probative. This evidence remains stuck in the discourse that arose from the trial though the process excluded much of that evidence. What does this suggest about the value of 'legalism' and the authoritativeness of judgment?

What about Ilse's defense? Well, she did take the stand. The spirit of her testimony was that she was just a normal SS wife, innocent, taking care of her children and being a mother. In addition, in terms of specifics, Ilse testified that

¹⁶ Alexandra Przyrembel, 'Transfixed by an Image: Ilse Koch, the "Kommandeuse of Buchenwald"' (2001) 19 *German History* 369, 381-382 (observing that inmates shaped Ilse's image by forming 'common knowledge' about Ilse that was necessary to survive).

- She never rode horseback alone and never carried a riding crop;
- In October 1941 she fell from a horse and never rode again;
- She admitted to reporting two inmates, but did not suggest their punishment;
- One inmate worked in her house and smashed glassware and bottles of wine and was found in the basement completely drunk;
- The other inmate was missing for the day and she reported him when she found him in her basement;
- She never beat the inmates;
- She never had anything made of human skin;
- She never had authority at Buchenwald.

Some of the other accused referenced Ilse in their testimony in ways that led to defense submissions. For example, these other defendants testified that they searched her house in 1943 and found no articles made from tattooed human skin. Family members testified they never saw tattooed human skin products.

The court found *inter alia* that the evidence established that Ilse reported inmates who were severely punished and that she knew the punishments would be severe. She personally beat an inmate on at least one occasion.

On 8 June 1948, General Lucius D. Clay (the interim military governor of the American Zone) reduced Ilse's term to four years on the grounds that there was 'no convincing evidence that she had selected inmates for extermination in order to secure tattooed skins, or that she possessed any articles made of human skin'.¹⁷ The sentence reduction became public knowledge on 16 September 1948. An uproar ensued.¹⁸ The case's Chief Prosecutor, William Denson, was among the more vocal protesters. He wrote a letter criticizing Clay's decision that was circulated in newspapers across the country.¹⁹ While generally supportive of the commutation of many convicted Nazis so as to win the support of Germany amid emergent US-Russian 'Cold War' rivalries, the United States Congress was sufficiently concerned with Ilse's early release that it conducted its own hearing on her case. This produced a Congressional Report. Despite this, Ilse's commutation remained in place and she was released in 1950. Ilse was one of 317 convicted war criminals who had their sentence commuted by Lucius at that time out of a total of 1,653 which were reviewed.²⁰ Of the 31 convicted at Buchenwald, 13 (including Ilse) had their sentences commuted. Lucius' biography later reported that he called Ilse a 'loathsome creature' and that he 'received more abuse for' reducing Ilse's sentence 'than for anything else [he] did in Germany'.²¹

2.3 1950-1951 Trial

¹⁷ 'Germany: Very Special Present' *Time* (New York, 25 December 1950).

¹⁸ See 'Koch Freeing Protested' *NY Times* (New York, 28 March 1949) (detailing the public protests in reaction to Ilse's sentence commutation); 'Leniency for Nazi Arouses Germany' *NY Times* (New York, 18 September 1948); 'Clay to Advise on Koch Case' *The Washington Post* (Washington, D.C., 29 September 1948).

¹⁹ See William D. Denson, 'Ilse Koch' *The Washington Post* (Washington, D.C., 23 September 1948) 10.

²⁰ See Leon B. Poullada Personal Papers. Subject File, 1947-1965. 'Nordhausen-Dora Concentration Camp War Crimes Trials, 1947-1948 (1 of 2 folders)' LBPPP-001-021, John F. Kennedy Presidential Library and Museum Archives, Boston, Massachusetts 44. While the US Congressional hearing concluded there was sufficient evidence for Ilse's life sentence to stand, it was noted that authority was lacking to overturn Lucius' commutation – this situation constituted yet another factor that pressed West Germany to subsequently charge Ilse.

²¹ Jean Edward Smith, *Lucius D. Clay, an American Life* (Henry Holt & Co. 1992) page [].

West German authorities (re)arrested Ilse shortly after her release resulting from Lucius' commutation of her sentence. They did so under pressure of public opinion. The USSR had fought to have Ilse extradited to its jurisdiction to be prosecuted but this attempt was unsuccessful. It was not too common at the time for convicted Nazis who were released on sentence commutation to be re-arrested and retried for virtually the same conduct (under different sets of law) and, what is more, to be sentenced to another life term. All this suggests, as explored further in the next Part of this paper, that there was 'somethings special about Ilse'.

In any event, Ilse was arraigned and tried at the Augsburg state court (*Landgericht*). Her trial lasted seven weeks. Three judges presided. There were six jury members. A whopping two-hundred and fifty witnesses were heard, including fifty for the defense, in a tight time-frame.

The hearing opened on 27 November 1950. On 15 January 1951, a 111-page-long decision was issued. Ilse was not present in court when the verdict was rendered. She was convicted and received a sentence of life imprisonment.

Ilse was charged with instigating the murder of 45 prisoners, complicity in 135 other murders, and one attempted murder.²² The factual context, namely atrocity at Buchenwald, was substantially similar to the context that the Americans had prosecuted in the Dachau proceedings. These charges were brought under ordinary criminal law, not international law as domesticated into national law. Prosecuting atrocity perpetrators subsequently for ordinary common crimes may circumvent *ne bis in idem* (double jeopardy) defenses. In Ilse's case, the Augsburg judge ruled that the previous trials in 1944 (the SS trial) and in 1947 were not bars to additional proceedings. What is more, while at the 1947 trial Ilse was charged with crimes against foreigners committed after 1 September 1939, in the 1950-1951 trial she was charged with crimes allegedly committed against Austrians and Germans (in the 1944 SS trial she was only charged with illicitly receiving financial proceeds).

Ilse collapsed and twice had to be carried from court.

At least four witnesses testified that they had seen Ilse select tattooed prisoners, who were then killed, for their skin; testimony came from witnesses who been involved in the process of making human-skin lampshades from tattooed skin. For example, Gustav Wegerer, an Austrian political prisoner and pathologist, testified that Ilse was seen in his work detail, the lampshade made of human skin was being made for her, and he heard her say that the people chosen for the lamp 'had not found favour' with her. Josef Ackermann, a political prisoner and secretary of the camp doctor, testified that he delivered the lampshade to Ilse at her birthday party. The lamp was allegedly made of a human foot and shinbone and observers could see tattoos and nipples on the screen. That said, the prosecution ultimately dropped all charges related thereto.

Ilse was found guilty of incitement to murder, incitement to attempted murder, incitement to committing grievous bodily harm, and causing injuries of two inmates. She was acquitted of personally assisting in any killings. Ilse was sentenced to life imprisonment and permanent forfeiture of civil rights.²³

²² The exact numbers are not consistent across sources; some say 36 and 146, and others say 45 and 135. One source adds an additional charge of 'attempted murder'. Compare 'Ilse Koch's Denial About Tattooed-Skin Goods', *The West Australian* (Perth, 9 January 1951) 4; with 'Charges Against Ilse Koch' *The Cairns Post* (Far North Queensland, 17 January 1951) 2; and "'Witch of Buchenwald' Imprisoned for Life', *The Washington Post* 16 January 1951) 4.

²³ Arthur Lee Smith, *Die Hexe von Buchenwald: der Fall Ilse Koch* (Böhlau 1983) 146.

Ilse later appealed to have the judgment quashed. The Federal Court of Justice dismissed her appeal on 22 April 1952.

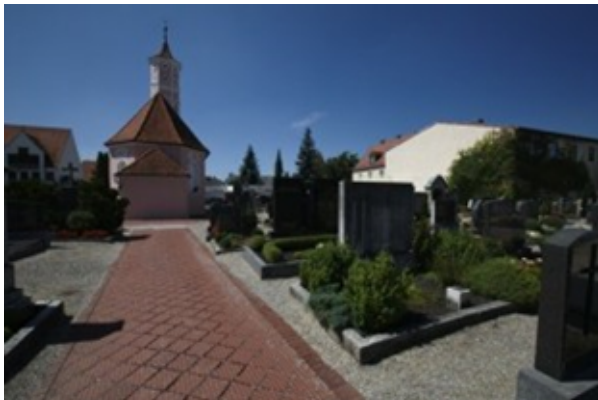
Ilse's West German trial also highlighted her relationships and affairs. One witness, interestingly, refused to testify publicly about her affairs so the press was asked to leave the court that day. This witness was Dr. Morgen. Media interest in Ilse's West German trial was noteworthy. Records from the Bavarian archives indicate that Ilse was sexualized in a manner that continued the framing that had begun in the 1947 Dachau trial. The West German proceedings fed off that imagery.

2.4 *Suicide*

Ilse remained close to Uwe in the hurriedly limited time they knew of each other. As mother and son, '[t]hey had a good relationship' and she 'wrote poetry for him'.²⁴

She made several petitions for a pardon, but all were rejected by the Bavarian Ministry of Justice. She unsuccessfully protested her life sentence to the International Human Rights Commission.

Ilse committed suicide on 1 September 1967, at Aichach women's prison by hanging herself with a bed sheet.²⁵ It is reported that, at the time, she suffered from delusions and had become convinced that concentration camp survivors would abuse her in her cell. Ilse is buried in an unmarked grave in Aichach's cemetery.



3 A Prurient Burlesque

The role(s) of women as perpetrators in the Holocaust remains a growing yet still thin area of research. This lack of attention is somewhat vexing in light of the fact that women served as overseers in the Nazi concentration and forced labour camp system. It has been estimated that 8.5% of Auschwitz guards were women.²⁶ A number of women's camps, Ravensbrück for

²⁴ 'Koch, Ilse-Kohler, "The Bitch of Buchenwald"', supra note 10.

²⁵ Hackett, supra note 3, 43, n19.

²⁶ Wolfgang Sofsky, *The Order of Terror: The Concentration Camp* (Princeton University Press 1999) 38, 102. See also Susannah Heschel, 'Does Atrocity Have a Gender? Feminist Interpretations of Women in the SS,' in Jeffrey M. Diefendorf (ed.), *Lessons and Legacies Volume VI: New Currents in Holocaust Research* (Northwestern University Press, 2004) 304 (noting that very few women were even interrogated after the war even though women comprised 10% of SS guards).

instance, were particularly dreadful: 90,000 of the 130,000 women deported to Ravensbrück died, many falling victim to the brutality of SS female overseers. Yet no woman appeared in the dock alongside prominent Nazis, such as Rudolf Hess or Hermann Goering. The paucity of women defendants moreover extended well downwards into the subsequent proceedings held throughout occupied Germany, as well as the many Holocaust trials that took place in dozens of jurisdictions in the decades that followed. This paucity can to some degree be explained by the fact that women were not part of camp leadership; nor were women in the SS allowed to become full SS members with equal rights to men (they mainly served as helpers, namely, *SS-Helferin*). Nor were women allowed into combat. But there is more: women were simply not perceived as ‘threats to post-war German society’.²⁷ Many positions women occupied as nurses, administrators (within the SS, government, and police) or wives of prominent men did not give them official access to active planning and decision making. Many lacked the formal authority to commit crimes and conspire with their superiors.²⁸

But, still, women – such as Ilse – inflicted wretched acts of violence upon others. Some did occasionally face trial, for instance in the local zonal courts, such as the one that convicted Ilse. Women thusly prosecuted became stylized and portrayed either as monsters or, on the contrary, as so innocent that they were helplessly incapable of any monstrous acts.²⁹ While prosecutions in West Germany trended towards judicial narratives that portrayed women as monsters, those undertaken in East Germany trended towards depictions of damsel-in-distress haplessness.³⁰ Women prosecuted as monsters thereby became *sensationalized*, including by the media, and came to carry a heavy representational burden. These women were masculinized; that said, because they physically remained as women, they became projected as deviantly wicked.³¹ They did not correspond to the Nazi image of proper Aryan femininity³² or the post-war image of women – the *Trümmerfrauen* – single-handedly and diligently shouldering Germany’s reconstruction.³³

Ilse’s 1947 and 1950-1951 trials, we argue, were contoured by these reductive tropes just as much as they fed them. Ilse was portrayed as a lascivious, atavistic nymphomaniac. Her trials tabooified women perpetrators, spectacularized female violence, and served as an optical space to (re)establish appropriate feminine morays. Her trials exemplify the prosecution of women perpetrators as *visual spectacles* – as burlesque, the circus, a carnival of sorts. In Ilse’s case, the

²⁷ Wendy Lower, *Hitler’s Furies: German Women in the Nazi Killing Fields* (Mariner Books, Publisher, 2013) 168.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Antony Rowland, ‘Reading the Female Perpetrator’ 17 *Holocaust Studies: A Journal of Culture and History* (2011) 145, 147.

³¹ On ‘female masculinity’ and Ilse, see Judith Halberstam, *Female Masculinity* (Duke University Press 1998) cited in *ibid*.

³² The Nazi Party’s perception of Aryan women was one of purity and maternal strength. Under Nazi Germany, women and men’s roles were clearly delineated. The ideal woman thrives within the confines of family life, contributes to reproduction, and avoids impurities (*kinder*; *küche*; *kirche* - children, kitchen, and church). Adolf Hitler himself exhorted: ‘Providence assigned to woman the cares of a world that is particularly her own, and it is only on this that man’s world can be shaped and constructed. That is why these two worlds are never in conflict. They complement each other, they belong together, as man and woman belong together. We feel it is not appropriate when woman forces her way into man’s world, into his territory; instead we perceive it as natural when these two worlds remain separate’. (Adolf Hitler, ‘Speech to the National Socialist Women’s Organization’, 8 September 1934, cited in Felicia Morris, ‘Beautiful Monsters’ (2011) 11 *Legacy* 59, 59).

³³ Heschel, *supra* note 26) 311 (arguing that ‘women perpetrators have had to be described as deviant females ... in order to preserve the innocence of German women – an effort ... in which postwar Americans collaborated’).

tropes fomented through the judicial process were seized upon, amplified, and disseminated through media outlets.³⁴ Judicial processes do not explicitly seed such tropes in the case of all women atrocity perpetrators, to be clear. Pauline Nyiramasuhuko, the former Rwandan Minister of Women's and Family Affairs during that country's 1994 genocide is an example. Nyiramasuhuko was convicted by the International Criminal Tribunal for Rwanda (ICTR) on grievous charges, including rape.³⁵ Prosecution and defense deployed public relations strategies outside the courtroom that essentialized gender (Nyiramasuhuko was more deviant because she was a woman; or she couldn't have done what she is accused of having done because she was a woman, wife, mother, and grandmother).³⁶ The media picked up on these tropes.³⁷ The courtroom space, however, in Nyiramasuhuko's case was not subject to these tropes nor was the judgment which, in the end, also reads awkwardly as if she had no gender.

In Ilse's case, certainly at the US trial, all spaces were inflamed with the 'monsterish whore' narrative. Seated on a throne on a pedestal in the centre of the makeshift courtroom, as captured in the photograph below taken during her US trial, Ilse is ogled by the sideways gaze of gawking men while women spectators sit demurely in the shadows. Ilse ensconces herself confidently. Her feet are firmly yet comfortably planted, legs uncrossed, wrist dangling on the armrest, her hand grips nothing, no fingers are clenched. Ilse exudes defiance.



Dr. Konrad Morgen, a SS judge and investigator who testified against Ilse in all three of her trials, described her as 'a hussy who rode on horseback in sexy underwear in front of the prisoners and then noted down for punishment the numbers of those who looked at her ...

³⁴ 'This framing of the media response in terms of gender politics is not to excuse or downgrade Ilse's crimes, of course, but merely to provide an explication for their acute visibility'. See Rowland, supra note 30) 149.

³⁵ Mark A. Drumbl, 'She Makes Me Ashamed to Be a Woman: The Genocide Conviction of Pauline Nyiramasuhuko' (2013) 34 *Michigan Journal of International Law* 559, 561, 564, 580.

³⁶ Ibid., 563, 583-586.

³⁷ Ibid., 586-591.

Simply primitive'.³⁸ A prosecutor simply referred to her as a 'creature'.³⁹ Media accounts were even more graphic. These accounts eviscerated her: she was depicted as hyper-sexualized, a 'red headed cocotte', as the 'bitch' [in other instances 'witch'⁴⁰ and in others 'beast'⁴¹ and in others still 'queen'⁴²] of Buchenwald. Ilse was also referred to as 'Butcher Widow'.⁴³ *Der Spiegel* described her as a "Venus Callipyge."⁴⁴

A 1975 Canadian Naziploitation/sexploitation film parodies Ilse as the lead character in a series called 'Ilsa, She-Wolf of the SS' that features sexual acts with and torture of prisoners.⁴⁵ Woody Guthrie, a renowned American folk singer, wrote a song about her in protest of her release;⁴⁶ note also Gilla Cremer's play, *Die Kommandeuse* (1995).⁴⁷ Ilse, moreover, was included in a Channel 5 documentary film in 2002 as part of the series *The Most Evil Men and Women in History*, in which she is likened to Genghis Khan, Mary Queen of Scots, and Count Dracula.⁴⁸ It has been suggested that Hanna, a lead character in Bernhard Schlink's broadly acclaimed *The Reader*, is influenced by the iconography of Ilse (and Irma Grese, another spectacularized female Nazi concentration camp guard).⁴⁹

Ilse's conduct at Buchenwald was credibly rumoured to be one of frequent affairs, simultaneous lovers, and the sexual humiliation of prisoners. It is reported that she ordered prisoners to serve her while she was nude; that she forced prisoners to show her their penises

³⁸ See *supra* note *.

³⁹ Taylor Davison, 'Ilse Koch: The Bitch of Buchenwald & the Stereotyping of Female Perpetrators of Mass Atrocity', Washington and Lee University, Paper for Mass Atrocities Seminar (April 27, 2018) at p. 17.

⁴⁰ 'Ilse Koch: Red Witch of Buchenwald, on Trial' *Los Angeles Times* (Los Angeles, 28 November 1950) 5.

⁴¹ Dan Alban, 'Books Bound in Human Skin; Lampshade Myth?' *Harvard Law Record*, (11 November 2005) <<http://hlrecord.org/books-bound-in-human-skin-lampshade-myth/>> accessed 31 May 2020.

⁴² Hal Boyle, 'Cruel "Queen of Buchenwald" given a permanent address', *The Milwaukee Journal* (Milwaukee 14 August 1947) 2; 'Buchenwald Queen Must Face German Court On Release', *The Evening Independent* (St. Petersburg, Fl, 4 July 1949) 15.

⁴³ 'Army Seeks New Charges Against Butcher Widow', *The Evening Independent* (St. Petersburg, Fl, 29 September 1948) 3.

⁴⁴ Durch den Tunnel, 'Da kam der Koch' *Der Spiegel* (Hamburg, 9 October 1948) 9. Also known as the Aphrodite Kallipygos (Greek: *Ἀφροδίτη Καλλίπυγος*) or the Callipygian Venus, which all literally mean 'Venus (or Aphrodite) of the beautiful buttocks'.

⁴⁵ Directed by Don Edmonds, written by Jonah Royston, and produced by David Friedman. On Wikipedia, the plot line of the film is as follows: 'Ilsa is Kommandant of a Nazi prison camp, who conducts sadistic scientific experiments designed to demonstrate that women are more capable of enduring pain than men are, and therefore should be allowed to fight in the German armed forces (it is late in the war and the Nazi military is in dire need of reinforcements). Ilsa is also portrayed as a buxom woman with a voracious sexual appetite for men. Every night, she chooses another of her male prisoners and rapes him. However, owing to her hypersexuality, she is disappointed when her current victim eventually ejaculates, and promptly has him castrated and put to death. Only one American prisoner, who can avoid ejaculating, manages to use her weakness to his favor. He hopes that the Allies will arrive soon, but a faction of the SS wants to eliminate all evidence and witnesses'. ('Ilsa, She Wolf of the SS' (*Wikipedia*) <https://en.wikipedia.org/wiki/Ilsa,_She_Wolf_of_the_SS> accessed 31 May 2020). In 1976, a sequel was made called 'Ilse, Harem Keeper of the Oil Sheiks'. For further discussion, see Lynn Rapaport, 'Holocaust Pornography: Profaning the Sacred in "Ilse, She-Wolf of the SS"' (2003) 22 *Shofar* 53.

⁴⁶ The song tells of Ilse's abuses in Buchenwald, her imprisonment, and her release. *Ilse Koch* [song], Lyrics by W. Guthrie, Music by L. Sklamberg, Woody Guthrie Publications & PsychoFreylekhs Music. The song was recorded in 2006 by The Klezmatiks.

⁴⁷ See <http://www.gillacremer.de/die-kommandeuse>. This one-person play was written as part of a series of plays documenting war and fascism. The script depicts Ilse's life, from 'court records, eyewitness reports, [and] self-testimonials'. 'Angemessen Grobartig' *Der Spiegel* (Hamburg, 13 March 1995). 134-136.

⁴⁸ Rowland, *supra* note 30, 149.

⁴⁹ *Ibid.*, 151.

which she would then beat with a small stick.⁵⁰ Joseph Halow, who served as the court reporter in the US proceedings, wrote in his book *Innocent at Dachau* that gossip swirled that Ilse had engaged in numerous affairs with SS officers, had sexually abused inmates at Buchenwald, and moreover that at her behest her marital relationship scandalously was an open one.⁵¹ But such sexual proclivities and abuse, too, and open relationships, were the behaviours of many men: indeed, much more so.⁵² Yet in Ilse's case these allegations sparked a feeding frenzy of rapacious, brazen lasciviousness such that it becomes a challenge to separate fact from fiction. Gossip abounded that Ilse had tempted Jewish translators in the prison cells while awaiting trial and during the trial. Indeed, Ilse appeared late-term pregnant at her trial. Normally, when an accused becomes pregnant while isolated in detention, the assumption is that the sex was non-consensual. This is seen as a human rights violation. In Ilse's case, however, the assumption was different – it was *she* who had seduced and inveigled men to impregnate her while she was behind bars. Other lurid 'Ilse gossip' surrounds the allegation that she had lampshades made out of prisoner skin. Although these allegations were never proven at any trial, and indeed were judicially dismissed as hearsay or dropped by prosecutors themselves, they still stick as 'facts' decades after Ilse's death. In the end, Ilse's actual story – 'her' story – becomes lost.

These accusations discursively stick even though the operation of law acquitted her of these charges and the evidence was not found to be probative. They stuck even though their unproven nature was one of the reasons US General Clay released Ilse early, leading to the vigorous public protest. For us as lawyers, then, existential questions arise about the accuracy of law, about our obsessions with due process, and the salience of the actual evidentiary record as authenticated by courts. It seems that 'law' just cannot counter gossip, innuendo, or salaciousness. For example, the 2002 Channel 5 documentary film series *The Most Evil Men and Women in History*, made it 'historical "fact"' that Ilse Koch commandeered the laboratory and requested tattooed skin' when roughly 50 years earlier she had twice been acquitted of these charges.⁵³

Questions linger. Who decided that all this was to be the *visible* narrative for Ilse? Certainly, the two tribunals played an initial framing role, in particular, on the vixen characterization. The media really piled on. Scholars and activists, as well. And why? Ostensibly, this would be in the name of justice for the crimes and the reconstruction of Germany. Yet we see something deeper, namely, that the Ilse's framing blurred and manipulated not only 'her' reality but also the broader space occupied by women in Nazi Germany and also in post-war Germany.

Two disparate perspectives appear to evidence an interest in either sensationalizing Ilse or, alternately, in ignoring her.

Patriarchal impulses tabooify Ilse because she is so offensive to 'proper' femininity. Once Ilse becomes apprehended she mutates into a public figure. People – mostly, but not only,

⁵⁰ Hackett, *supra* note 3) 44, 335-337.

⁵¹ Prior to her trial, evidence surfaced that Ilse had been having concurrent affairs with Waldemar Hoven, a SS captain who was the chief medical doctor at Buchenwald, and Hermann Florstedt, Buchenwald's Deputy Commandant. *Ibid.*, 336-337.

⁵² For instance, the 'joy division', a brothel for male SS and male Kapos at Auschwitz. *See also generally* Kimberly Allar, 'Setting the Picture Straight: The Ordinary Women of Nazi Germany and Rwanda Who Participated in Genocide' in Karin Auerbach (ed.), *Aftermath: Genocide, Memory and History*, (Victoria, AU, Monash University Publishing 2015) 21 ('[W]hile male violence is frequently normalized and even expected in certain situations, female violence both repels and attracts').

⁵³ Rowland, *supra* note 30, 149.

men – take ownership of her story without regard to her truth or reality. She becomes appropriated. This frame neatly positions women’s role in a single-sided framework. International criminal justice as tangible and visible and visual therefore becomes infused with gender stereotyping and ensconces a patriarchal gaze along with its elisions and distortions. The spectacularisation of Ilse’s ‘story’ has generalizable effects: these are that the female perpetrator becomes stylized as exceptional, aberrational, and utterly anomalous. As a result, ‘her’ freak acts and behaviours cannot fit the roles ascribed to women (maternal, caring, innocent, resilient) and thereby become overdrawn.⁵⁴

This second dynamic – that of ignoring or overlooking Ilse – emerges from a different pressure point. This pressure begins with the largely scholarly and academic push to ‘discover’ the women at Nuremberg and the presence of women in the historiography of international criminal law more generally. This push, however, tends sharply towards women in salutary and saving roles, to wit, women who judge, prosecute, or investigate – or in a sign of those times *help* those efforts – or women as witnesses and victims. Immi Tallgren chimes in:

Whether “academic” or “popular” histories, or histories written by lawyers, few women appear in their pages. When they do, it is as direct victims – killed, raped, tortured, enslaved, persecuted, detained – or their mothers, wives, daughters, other family or community members. In terms of criminal procedure, women figure as victims, victim-witnesses, or witnesses; not as the accused, convicted, or acquitted.⁵⁵

Referencing a recent blog series posted on the IntLawGrrls website (a US-based website on women and international criminal law), Tallgren adds:

Whereas women lawyers amongst the prosecutorial staff and defence counsels, as well as staffers, interpreters, and journalists receive a detailed and celebratory description on the website, the very few women accused at the Nuremberg follow-up proceedings and in other trials by the US or UK occupation authorities seem to complicate the efforts to find the *first* women in histories of the *first* international trials.⁵⁶

Reclaiming the space of women and international criminal law also should mean recognizing that women were vastly underrepresented operationally *as accused defendants* in light of actual

⁵⁴ See generally Lower, *supra* note 27) 144 (‘To assume that violence is not a feminine characteristic and that women are not capable of mass murder has obvious appeal: it allows for hope that at least half the human race will not devour the other, that it will protect children and so safeguard the future. But minimizing the violent behavior of women creates a false shield against a more direct confrontation with genocide and its disconcerting realities’).

⁵⁵ Immi Tallgren, “‘Voglio una donna!’: On Rewriting the History of International Criminal Justice with the Help of Women Who Perpetrated International Crimes” in Immi Tallgren and Thomas Skouteris (eds.), *The New Histories of International Criminal Law: Retrials* (Oxford, UK, Oxford University Press 2019) 110.

⁵⁶ *Ibid.*, 117.

acts of perpetration.⁵⁷ As Agarwalla pithily notes: ‘The feminist truism that women did not and do not participate in the war as anything other than victims is simply not historically true’.⁵⁸

While not essentializing Ilse, this lens does something equally hurtful, that is, to ignore her, which leads to a similar result than the patriarchal lurid stereotype, that is, to marginalize her as totally aberrational because women who are bad should be briefly mentioned and then cabined away, like an embarrassing aunt at a holiday dinner, because, indeed, she does not represent the group and the group, well, mostly it just can’t be so bad. If not ignored, then Ilse’s conduct tends to be written off as entirely derivative of patriarchal forces – her husband or gender-based subordination, for example – without actually inquiring whether and how this actually may (or may not) have happened in terms of her individual case. Tallgren neatly captures the dynamic: ‘Behind every visible woman perpetrator, viewed as the exception, there is an invisible or visible man. Women perpetrating crimes either imitate, obey or seek to please men, with no ownership or ideological input of their own’.⁵⁹

In Ilse’s case, the visibilities and invisibilities of her trial omit a nuanced vision which rather than spectacularize or negate is more honest in unpacking the ‘real’ Ilse or in the least seeks to identify, if possible, what crimes she ‘really’ was guilty of.⁶⁰ The tabooification of Ilse still hampers our understanding of the Holocaust and those who contributed to it. This fascination with Ilse as a whorish ‘monster’ allows her story to be told only partially and for ulterior purposes. One effect of all this might be to obstruct the painful exercise of unravelling the Holocaust which would consist of questioning women’s roles more generally whilst dispelling myths that women were only innocent bystanders to be sheltered or villainous deviant perverts to be gawked at. Casting female Nazi perpetrators as sadistic aberrations was more palatable than the alternative, namely, to accept that ordinary women could commit wretched

⁵⁷ Shubhangi Agarwalla, ‘Critiquing the Mainstream Feminist Position on Sexual Violence during Conflict’ (*IntLawGrrls*, 22 November 2019) <<https://ilg2.org/2019/11/22/critiquing-the-mainstream-feminist-position-on-sexual-violence-during-conflict/>> accessed 22 November 2019) (‘Wendy Lower and Elizabeth Heineman, both feminist historians who have really been trying to unpack the complexities of law and politics during the period, assert that in both general histories of the Holocaust and studies of Nazi women, scholars have greatly underestimated the role these women played both during and after the war. Lower shows that the Nazi genocidal system could not have functioned without the participation of the thousands of women who filled key positions in the Nazi hierarchy as both helpers and overseers. Heineman similarly shows that women’s paid work and labor for the state bureaucracy and not just their reproductive capacity were crucial to carrying out [the] Nazi agenda’.).

⁵⁸ *Ibid.*,.

⁵⁹ See Tallgren, *supra* note 55) 127 (‘[T]he few women who end up being prosecuted for such grave crimes get processed in a gendered discursive practice that produces and reproduces them as unnatural ‘non-women’ or dependent on men and infantilized’.); Joanne Reilly, *Belsen: The Liberation of a Concentration Camp* (Routledge 1998) 43 (‘Modern feminist analysis and the ‘tools’ of socialization can offer some interesting insights into the position of women in Belsen. Under patriarchy women can be classified into two camps, broadly the “good” and the “wicked”, the extremes of Madonna and Whore. The “good”, portrayed as representatives of a higher or purer nature, can be venerated using the symbolism surrounding angelic, virginal and Mother of God figures. They manifest qualities of order and harmony, purity, virtue, chastity, decency and modesty. Conversely, women vilified by patriarchy, who are symbolized by darkness and represented as the Whore of Babylon figure, are inherently sinful, immodest, indecent, promiscuous and seek to contaminate society with their wickedness. The latter are detestable and open to abuse, the former in need of protection. These twin concepts (though perhaps not in the extreme forms outlined above) can be applied to Belsen when examining male responses to the different groups of women in the camp’.).

⁶⁰ As Taylor Davison aptly observes, an elision arises: ‘This portrayal of Ilse overrode the fact that she was a rational actor, although one who likely acted out of her own selfish desires for wealth, status and power; that makes her no different than many of the men who were complicit and in control of the Nazi hierarchy’. Davison, *supra* note 39), pp. 16-17.

crimes in the name of collective racial and national supremacy – or just because they wanted to and felt like it.

4 Two Legalistic Takeaways from the Trials

Each of the three trial frames Ilse's actions differently. Whereas the American trial focused on her crimes against Allied nationals (non-Germans), the West German trial focused on her crimes against Austrians and Germans. And her SS trial (where she was acquitted) focused on her alleged crimes against Nazi Germany and the Nazi party, specifically, Ilse and Karl's theft of money, valuables, and gold teeth from prisoners to fund a lavish private lifestyle as opposed to turning all these proceeds over to the Nazi cause. In the end, then, each trial expressed harms against three different audiences. Each of the three trials, moreover, demonstrates varying degrees of sexualized sensationalism. The US trial clearly sits at the apex, though the motivations for the West German prosecution lie causally in the related furore arising from Lucius' decision to release her and the West German proceedings certainly made explicit references to her affairs.

4.1 *Disproportionality and Appropriate Femininity: Wasn't there Just 'Something' about Ilse?*

As regards the 1947 and 1950-1951 proceedings, a lingering question arises: was Ilse on trial only for crimes within the jurisdiction of the prosecuting entities or was she also sanctioned for not fitting the image of the model woman whether constructed by the Allies, by post-conflict transitional West Germany, or by the Nazis? It is clear that Ilse was punished at the more severe end of the spectrum when it comes to Nazi concentration camp guards: her lengthy sentence by the West German court places her in a position as having served more time than many other abusers. Ilse would indeed spend the rest of her life in jail, 'while former Gestapo chiefs, generals of the Waffen-SS, and Einsatzgruppen commanders responsible for shooting tens of thousands of Jews regained their freedom after a handful of years in prison, and often quickly because esteemed and prosperous citizens'.⁶¹ What is more, Ilse was singled out for double prosecution on what largely was a similar crime-base.

While Ilse committed war crimes, questions of proportionality arise. Was this harsh punitiveness justified because of the actual heightened gravity of the harms Ilse inflicted? Was it because the *kind of harms* she committed were seen as worse than the harms that other offenders committed? Or was there just 'something about Ilse', namely, her unrepentant defiance? Or can this disproportionality of punishment be deconstructed as gendered, namely, because Ilse as a woman and as a mother committed the impugned acts? Is it 'worse' when a woman abuses men?

Women atrocity perpetrators tend to situate themselves at either end of the punishment spectrum – a sharp bimodality arises. On the one hand, women atrocity perpetrators either are not prosecuted ('chivalry theory' as has been noted in Rwanda)⁶² or are assigned low sentences.

⁶¹ Michael S. Bryant, 'Punishing the Excess: Sadism, Bureaucratized Atrocity, and the U.S. Army Concentration Camp Trials, 1945-1947' in Nathan Stoltzfus and Henry Friendlander (eds), *Nazi Crimes and the Law* (Publisher 2008) 63-85, n 17 (citing Ulrich Herbert et al. *Die Nationalsozialistische Konzentrationslager* (Peter Helmberger, ed., 1999)).

⁶² Chivalry theory suggests that '[I]nvestigators, prosecutors and judges are so infected by gender stereotypes that they either cannot perceive of women as criminals or feel protective towards them in spite of their suspected or proven criminality. Men therefore, perhaps unwittingly, exercise their discretion in women's favour at each level of

On the other hand, however, other women atrocity perpetrators become sentenced more severely than their similarly situated male comrades. SS female camp overseers were treated more harshly following the war than men of corresponding status and roles: these women ‘were sentenced to death more frequently, and they received longer prison sentences’.⁶³ Indeed, the Chief Prosecutor in Ilse’s 1947 case said the only reason Ilse was sentenced to life imprisonment, instead of to death, was because she was pregnant.⁶⁴ It is also interesting to note that six years after Lucius’ commutation of the Buchenwald and Dachau sentences, Ilse was the only convict who remained in custody.⁶⁵ On this note, since ‘[f]emale cruelty was considered by the prisoners and the allies to be a more serious crime than male brutality,’⁶⁶ perhaps the law simply gives voice to this victim- and occupier-centred view. Susannah Heschel remarks that ‘men’s cruelty is discussed without reference to their gender, as though the connection between atrocity and maleness is self-evident’.⁶⁷

The 30 male defendants on trial with Ilse in 1947 received little to no media attention. In fact, news articles containing names other than Ilse generically and anonymously read as a person who was put on trial and sentenced for their crime. Ilse, on the other hand, is rarely mentioned by the media without an attached introduction. Reporters highlighted (1) that she was a woman, (2) that she had red hair, (3) that she was the ‘Bitch of Buchenwald’ (or some other formation of the phrase), (4) some sort of comment on her as a psychopath, arrogant, and plump lady (to name a few), and (5) that she was infamous for collecting human lampshades made out of tattooed skin. Looking numerically at the contrast in media attention Ilse received, a search through the *New York Times* archives reveals that there were over 92 stories reported about Ilse from July of 1947 until 1952. Yet the other 30 defendants were only mentioned 2 to 3 times in that entire period. Most of the others were not named either, rather, they were mentioned as a group within articles whose focus lay on Ilse. The same ratios arise in other newspapers nationally and internationally as well. To the media, these other defendants were just other persons convicted of a particularly heinous crime. Indeed, there was no ‘something’ about them; there was just ‘something’ about Ilse. She was more than just another person; she was a monster.

We believe that Ilse’s experiences portend the salience, in her case, of factors *extraneous* to war crimes to deepen her stigma *as a war criminal*. It has been posited that Ilse’s influence on the day-to-day running of Buchenwald has been overstated.⁶⁸ Disproportionality therefore arises in terms of retributive justice, namely, disconnects between the gravity of the actual harm that is inflicted (and prosecuted) and the reprehensibility of related conduct. Notably, this outcome is problematic from a legalist perspective.

Ilse’s entanglement with the law also is problematic because we believe that it evokes gendered assumptions. Indeed, Ilse’s treatment seems to support the ‘mother/monster/whore’

the criminal justice system – during reports, arrests, prosecution and sentencing’. Nicole Hogg, ‘Women’s Participation in the Rwandan Genocide: Mothers or Monsters?’ (2010) 92 *International Review of the Red Cross* 69, 81.

⁶³ ‘SS Female Overseers in Auschwitz’ (*DEGOB*) <<http://degob.org/index.php?showarticle=2018>> accessed 31 May 2020 (discussing *inter alia* Maria Mandel, Johanna Langefeld, Margot Dreschler, and Irma Grese).

⁶⁴ Interview with William D. Denson, *supra* note 47).

⁶⁵ Przyrembel, *supra* note 16) 388.

⁶⁶ Aleksander Lasik, ‘The Apprehension and Punishment of the Auschwitz Concentration Camp Staff, in Waclaw Długoborski-Franciszek Piper (eds.), *Auschwitz 1940-1945, Volume 1-5, Central Issues in the History of the Camp*, Oswiecim (2000), Auschwitz-Birkenau State Museum, p. V/110.

⁶⁷ Heschel, *supra* note 26) 305.

⁶⁸ Przyrembel, *supra* note 16) 384.

trptych that Laura Sjoberg and Caron Gentry develop. These scholars observe that ‘a woman who commits proscribed violence, in her home or in global politics, has committed a “double transgression”: the crime for which she is being tried and her disregard of a gender stereotype which denies her mental capacity to commit such a crime’.⁶⁹ Sjoberg and Gentry further note:

The monster narrative at once demonizes violent women (characterizing them as evil) and ridicules them (hyperbolizing their evil [...]). This dual role that the monster narrative plays is further complicated by the element of sexual fantasy in the monster narrative, where popular culture fetishizes monstrous women.⁷⁰

Ilse was certainly fetishized;⁷¹ indeed, she triggered pornographic fantasia even thirty years later and well after her suicide, as evidenced by the films and their covers shown below.



⁶⁹ Laura Sjoberg and Caron E. Gentry, *Mothers, Monsters, Whores: Women's Violence in Global Politics* (Zed Books, London, 2007) 15.

⁷⁰ *Ibid.*, 37.

⁷¹ See generally Ulrike Weckel, 'Does Gender Matter?' (2005) 17 *Gender & History* 538, 560 (commenting upon 'fantasies about particularly evil Nazi women – women so wicked that they turned the gender order upside down').



Ilse's trials, and the hoopla that surrounded them, thereby became spaces to re-establish 'morality' even when some, if not most, of the 'immorality' had little to do with the crime.

In the end, then, we suggest that Ilse's encounters with atrocity law demonstrate that atrocity trials can be deployed to build social narratives well beyond those related to post-conflict justice, in Ilse's case specifically to reinforce appropriate social roles for women.

Other – male – SS officers may have harmed and killed many more victims, but Ilse's perceived gender transgressions means she becomes catapulted as *the visible* Buchenwald Nazi – salacious, degenerate, and perverted. A woman who rode on horseback, cracked a whip, engaged in sexual assault, led a lascivious lifestyle, and wore an altered form of her husband's riding trousers (to which Ilse testified in the 1944 SS trial) was difficult to place. It thereby became important to restore normality and traditional womanhood by excommunicating her.

4.2 Being 'the Wife': Visibilities, Absorptions, Occlusions

While far from authoritative, Wikipedia remains illustrative and indicative. The Wikipedia page for Ilse lists the two things she is 'known for': 'Atrocities committed at Buchenwald and Majdanek concentration camps'; 'Wife of camp commandant chief overseer'. The World War II graves website⁷² concurs in that it lists Ilse's 'ranking' (*i.e.* her position) as 'wife', and then to wrap up: 'She was one of the first prominent Nazis to be tried by the U.S. military'.

Ilse remained linked to Karl even after his death. Ilse was judged with his ghost in the background. Witnesses at Ilse's trial testified that orders she gave were to be followed as if they had been given by Karl in his official capacity as the camp *Kommandant*. Yet much of Ilse's impugned conduct occurred while Karl was away for long swathes of time. Unknown in terms of the judicial narrative is what influence Karl actually may have exerted upon her. Another great irony is that Ilse had testified forcefully and extensively *against* Karl in the 1944 SS trial.

⁷² 'Koch, Ilse-Kohler, "The Bitch of Buchenwald"', *supra* note 10). (the term 'military' is misspelled in the original).

Yet Ilse still remained subsumed within Karl's orb, indissociable from him, to her detriment in the 1947 and 1950-1951 proceedings. Ilse's absorption into Karl as *alter ego* belies her own agency, and might bring pyrrhic comfort to constituencies – both patriarchal and feminist – who simply cannot imagine that she could have done what she was accused of doing but for the presence of a domineering husband.

This matrimonial absorption and its attendant occlusions also present legalistic concerns. Whereas formal military officials could invoke command capacity as a legal or moral defense (arguing remoteness or best efforts in command responsibility, for example, or being under a duty to serve or follow orders), their wives – Ilse in this case – could not since she lacked any formal position ('wife' is not an official rank).⁷³ On the other hand, prisoners may have genuinely felt her *de facto* command power regardless of her official *de jure* authority. All this suggests the need to develop broader and more finely tuned theories of command responsibility to further the accuracies of law's transliterations of what actually happened and how.

Such a refinement is topical. Generations after Ilse, for example, Simone Gbagbo was charged at the International Criminal Court (ICC) based on a theory that, even though she stood outside the formal hierarchies of power, she was the *alter ego* to her husband, Laurent Gbagbo, the head of state of Côte d'Ivoire. Simone held 'no official position in government; she wore no military uniform; she did not personally commit any of the crimes charged'; the ICC Prosecutor, nonetheless, alleged that she was part of Laurent's 'inner circle' and that she participated in meetings and instructed forces.⁷⁴ What is the defense to such a charge? The case, to be clear, ultimately collapsed for totally unrelated reasons. That said, bringing these charges was feted for the 'ICC's new willingness to look beyond formal governmental and military hierarchies in identifying those most responsible for serious international crimes,'⁷⁵ without recognizing that some persons in such contexts – wives – face a peculiar sort of associative liability. None of this is to deny that, indeed, wives of human rights abusers may become 'ignominious in their own right'.⁷⁶ Our purpose here is to underscore that care must be taken with this kind of associative liability so as to safeguard due process imperatives as well as juridical accuracies.

Ilse may be differentiated from other 'infamous' Nazi women concentration and forced labour camp guards who also were sexualized and sensationalized. Some of these women – for example Irma Grese, Margot Dreschler and Maria Mandel – had official positions and were not associatively (or reductively) linked as *alter egos* to their husbands when it came to culpability. Ilse was not identified as an *Aufseherin* (overseer), *SS-Oberaufseherin*, or *Rapportführerin* (like these three other women) in the trial proceedings or judicial outputs; nor was she viewed as an employee of the Nazi machinery during the trials. To be sure, any official position did not in the end shield these other three women from culpability or mitigate their sentences. Irma Grese was prosecuted in the Bergen-Belsen trial, convicted, and executed. Irma had arrived in Bergen-Belsen in March 1945 (after 2 years at Auschwitz) only weeks before the British liberated the camp. Maria Mandel received a death sentence in the Polish Auschwitz trial convened by the Supreme National Tribunal of Poland. Irma, too, has become tabooified, eroticized, degraded, and sensationalized; and she, too, had multiple sexual partners in Auschwitz, including among

⁷³ Cf Lower, *supra* note 27) 180.

⁷⁴ William Burke-White, 'A Wife Accused of War Crimes: The Unprecedented Case of Simone Gbagbo' *The Atlantic* (3 December 2012) <<https://www.theatlantic.com/international/archive/2012/12/a-wife-accused-of-war-crimes-the-unprecedented-case-of-simone-gbagbo/265828/>> accessed 1 November 2019.

⁷⁵ *Ibid.*

⁷⁶ Alette Smeulders and Fred Grünfeld, *International Crimes and Other Gross Human Rights Violations* (Martinus Nijhoff Publishers, Leiden, 2011) 326.

prisoners.⁷⁷ Sixteen women were convicted in the Belsen trial. Five women including Maria were prosecuted in the Polish trial of the Auschwitz staff. Four of these women were *SS-Aufseherinnen* – Maria herself was *SS-Oberaufseherin* – so all were official of formal rank. Two were sentenced to death, including Maria, and the sentence was carried out, one was sentenced to life imprisonment, and two to fifteen- year terms. It is noteworthy that Maria and Therese Brandl, the other woman sentenced to death, were the first two of the twenty-three Polish death sentences to be carried out.

5 Conclusion: Feminine Defiance and Judicial Accountability

Ilse's fate uncloaks limitations to trials as methods of post-conflict accountability and of *tableaux* of narrative framing. Trials may interface uneasily, perhaps even queasily, with gender when women are suspected of atrocity crimes. The hydraulics and pneumatics of trials inherently are deeply reductive. The prosecution proceeds with maximal outrage to convict the accused and sentence the accused to the longest possible term. The defense proceeds by assembling arguments that present the accused as innocent, helpless, and not responsible. Both of these goals map onto the ethical obligation of either side in an adversarial system. Trials exist to present the thesis of guilt and anti-thesis of non-guilt in the hope that the process, overseen by judge and jury, will yield the synthesis of 'the truth' and the outcome that is right.

This adversarial process, in the case of women atrocity perpetrators, becomes additionally distorted beyond existing shortcomings because of the law's disquiet and discomfort with violent women. Hence, prosecutors either balk or go for broke. They may balk by refraining from prosecuting because of 'chivalry theory', a move that may be buoyed not only by cringeworthy stereotype but also by ideological engagement of scholarly communities espousing theories of structural subordination of women suggesting that, indeed, women categorically cannot be responsible. Or prosecutors go for broke, harnessing the vilification of women atrocity defendants as being so deviant because they did what they did as women, mothers, and grandmothers. In this latter regard, trial narratives may become picked up and amplified by media – which are not under ethical duties of disclosure, evidentiary standards, and due process – leading to burlesque. Ilse's atrocity trials, indeed, exemplify this. In the end, then, Ilse as a subject of study is a taut one. While feminist scholars may overlook her in the normative interests of promoting gender equality, a patriarchal lens may ostracize her because of the need to re-establish 'harmonious' gender relations which in turn repose on appropriate feminine morays. In the end, then, Ilse's 'real story' disappears.

Ilse's treatment thereby gestures towards a rethink of trials as methods of dispensing justice and authenticating narratives of 'who did what where and to whom' in periods of atrocity and historicizing such narratives. Noting 'the heavy reliance on courtroom trials as the sole form of justice following atrocity,' Joanne Reilly makes this point more broadly:

In the quest to find 'those responsible,' the examination of societal systems that enable extreme violence is often pushed to the side. As can be seen from the Belsen Trial, gender norms may be used haphazardly if they

⁷⁷ For a survey see Dan Brown, *The Beautiful Beast: The Life and Crimes of SS-Aufseherin Irma Grese* (1996); Hollie Webb, 'Irma Grese, the Aufseherinnen, and Female Violence during the Holocaust', Mass Atrocities seminar research paper, Washington and Lee University School of Law (2018).

further the case of the prosecution or defense. Larger truths become irrelevant when looking at a microscopic view of certain moments in time. However, as can be seen from the aftermath of every atrocity in history, taking away the individuals considered to be the ‘worst’ does not change the system or society that enabled those people in the first place.⁷⁸

The atrocity trial’s focus – whether conducted internationally or nationally – upon the actions of a few grotesquely portrayed women fails to unmask the structural factors that fuelled the normalization of Nazism and the Final Solution among women. Ilse’s trial therefore promotes a broader agenda of collectivized innocence through Ilse’s becoming pilloried as a deviant freak. The focus on a handful of atavistically depicted women helps ease the burden of political transition by innocentizing the masses. Rowland concludes:

[T]he transformation of Ilse Koch into an icon of Nazism has had the effect of occluding the role of the male SS in Buchenwald, and the collusion of Germans living nearby the camp. Other – male – SS officers may have accounted for many more victims, but the perceived gender transgressions of Koch means she [becomes] *the* Buchenwald Nazi.⁷⁹

Ilse raises another quandary for international criminal law. This involves outreach. Atrocity proceedings, whether conducted internationally or nationally, hunger for recognition, for dissemination, for connecting with the public. Outreach is a major priority of international courts and tribunals. Accordingly, these entities fund and launch major outreach efforts. Linkages with the public and presence on ‘the street’ are seen as desirable and remain heavily valued. Needless to say, Ilse’s trials certainly connected with the public. This trial was quite popular, indeed, and remains so. Trials often are boring and tedious. Not hers, which vaulted war crimes law and war crimes trials into the public sphere. Indeed, the trial generated films, media, books, and porn flicks. When it came to outreach, then, Ilse’s trial was a success. So, if war crimes prosecutions hunger for outreach and connectivity to the ‘street’, well, Ilse’s achieved all this. So how to feel about that? One of us has thought about this in the context of memorials to Judge Pal, the radical dissenting judge on the Tokyo Tribunal who would have acquitted all the Japanese defendants.⁸⁰ Once again, there is outreach, a desired goal, but it’s not the kind international lawyers really wish for, rather it is the kind that ‘we’ (international criminal lawyers) get a bit queasy about.

Whereas extensive efforts have been undertaken to examine how ‘ordinary men’ could commit atrocity crimes,⁸¹ limited work has been undertaken to see how ‘ordinary women’ participated in mass atrocity.⁸² Perhaps Ilse could have been constructed as an ‘ordinary woman’ taking advantage of the opportunities offered and available to her, whether monetary, power, or

⁷⁸ Joanne Reilly, *Belsen: The Liberation of a Concentration Camp* 43 (Routledge 1998).

⁷⁹ Rowland, *supra* note 30) 149.

⁸⁰ See Mark A. Drumbl, ‘Memorializing Dissent: Justice Pal in Tokyo’ (2020) 114 *American Journal of International Law Unbound* 111; see also Mark A. Drumbl, ‘Judge Pal with Jefferson Davis in Tokyo’ (*Opinio Juris Blog*, 23 March 2019) <<http://opiniojuris.org/2019/03/23/judge-pal-with-jefferson-davis-in-tokyo/>>.

⁸¹ See, e.g. Christopher R. Browning, *Ordinary Men: Reserve Police Battalion 101 and the Final Solution in Poland* (Harper Collins 2013).

⁸² For examples of this scholarship, see Lower, *supra* note 27); Jessica Trisko Darden and Izabela Steflja, *Women as War Criminals: Gender, agency, and Justice* (Stanford University Press, 2020); and Alette Smeulers, ‘Female Perpetrators: Ordinary or Extra-ordinary Women?’ *International Criminal Law Review* 15 (2015) 207-253.

sexual. But she was instead cast as shockingly extraordinary, and this characterization continues to persist. It may be discomfiting to recognize that ordinary women are involved in genocide. Men may be this way, after all, for men are wayward; it is the peace-loving nurturing women who serves as a bulwark of morality, who are the gatekeepers of decency, who control access to sinful behaviour including sex, who 'civilize' clueless men by gently grooming them including in matrimony. Those women – such as Ilse – who wildly fail to conform to these feminine expectations and who could neither be ignored nor bestowed chivalry, well, they become cast as monsters – they are masculinized while they are sexualized. By framing Ilse as extraordinary, the gaze drifts away from thinking or talking about the conduct of ordinary women – that ordinary women could be agents of eliminationism remains implausible in that is the domain only of a handful of deviant beastly women.

This then paves a way to view Ilse, namely, as defiant of her assigned gendered role as held in high regard by each of Nazi Germany, the Allies, and post-conflict reconstructed West Germany. The positionality of women as feminine objects has most likely contributed to the prosecution of few women notwithstanding the fact that women were also complicit in the Holocaust. In comparison, Ilse's defiance provoked her prosecution and sears her in memory. Ilse is a prurient trespasser who overstepped the boundaries of acceptability. In the end, all the innuendo, hyperbole, and salaciousness simply make it difficult, all these decades later, to grasp which acts Ilse actually committed. Two different perspectives distort Ilse. Patriarchal impulses sensationalize her. Some feminist approaches, moreover, tend to overlook or hollow her out. Either way, what is lost is a clear-eyed and steadfast assessment of her own story and, by extrapolation, the heterogeneous stories of women as present within the cataclysm of collective atrocity.